

# Southern Tier Independence Center

## Incident Reporting Policies and Procedures

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## General Provisions

### **Policy Statement**

14 NYCRR Parts 624, 625 and 633 are applicable to all STIC programs that are funded by OPWDD. STIC has developed these policies and procedures in conformance with 14 NYCRR Parts 624, 625, 633 to:

- Ensure that staff report untoward events, called "reportable incidents" and "notable occurrences," that affect the well-being of people receiving services;
- Provide immediate care and protect the health, safety, and dignity of people with developmental disabilities involved in, or affected by, an incident;
- Investigate why incidents, including abuse and injuries, happen and take steps to prevent similar incidents from happening again;
- Establish an Incident Review Committee to review specific incidents/occurrences and examine trends; and
- Develop procedures and provide staff training and oversight, as needed, to prevent similar incidents in the future.

Agency policies and procedures, whether newly developed or representing a change from previously approved policies, are subject to approval by STIC's Board of Directors.

### **Notification of Incident Policies and Procedures**

STIC will offer to make available written information developed by OPWDD regarding incidents and a copy of STIC Incident Reporting policies and procedures to persons receiving services and/or to their parents, guardians, correspondents or advocates, unless the person is a capable adult who objects to their notification.

STIC will also offer to make available a copy of OPWDD's Part 624 regulations. In order to satisfy this requirement STIC will:

- provide instructions on how to access such information in electronic format and;
- upon written request, provide paper copies of such information.

Additionally, upon hire or initial volunteer, contract, or sponsorship arrangements, and annually thereafter, STIC will make the agency's policies and procedures on incident management known to agency employees, interns, volunteers, consultants, contractors, and family care providers. For parties who are required to be trained, this information shall be provided in conjunction with training.

STIC will also provide notice to all employees which states that:

- all reportable incidents, including reports of abuse and neglect, shall be investigated;
- if an employee leaves employment prior to the conclusion of a pending investigation, the investigation shall continue until it is completed and (for reports of abuse and neglect) a finding is made of substantiated or unsubstantiated.

### **Part 624 Requirements**

The requirements of Part 624 to report, address, investigate and review apply to events and situations, known as reportable incidents or notable occurrences that are "under the auspices" of an agency. Under the auspices means an event or situation occurs under circumstances in which the agency is providing services to a person.

An incident is considered to be under the auspices of STIC when:

- STIC is providing services to a person, which are authorized or funded through contract by OPWDD, whether or not the person is physically at a site owned or operated by STIC;
- The event directly involves or may have involved STIC personnel (staff, interns, contractors, consultants and/or volunteers);
- STIC personnel are, or should have been, physically present and providing services at that point in time; or
- The circumstances involve physical conditions at a site provided by STIC, even in the absence of agency personnel.

The term “Custodian” is used throughout the definitions of Part 624 Reportable Incidents and Notable Occurrences, as defined below. According to the Protection of People with Special Needs Act, a Custodian is one of the following:

- a director, operator, employee, or volunteer of an agency;
- a consultant or an employee or volunteer of a corporation, partnership, organization, or governmental entity that provides goods or services to an agency pursuant to contract or other arrangement that permits such party to have regular and substantial contact with individuals receiving services;
- a family care provider; or
- a family care respite/substitute provider.

## **Part 624 Reportable Incidents**

Reportable Incidents are events or situations that occur under the auspices of STIC and fall into two categories: Abuse/Neglect and Significant Incidents. These events and situations are defined below.

### **Reportable Incidents – Abuse/Neglect**

#### **Physical Abuse**

Conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment.

Such conduct may include, but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse does not include reasonable emergency interventions necessary to protect the safety of any party.

#### **Sexual Abuse**

Any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law; and/or any sexual contact between an individual receiving services and a custodian of the program or facility which provides services to that individual whether or not the sexual contact would constitute a crime. However, if the individual receiving services is married to the custodian the sexual contact shall not be considered sexual abuse. Further, for purposes of this definition, a person with a developmental disability who

is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.

### Psychological Abuse

Any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services. Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.

In order for a case of psychological abuse to be substantiated after it has been reported, the conduct must be shown to intentionally or recklessly cause, or be likely to cause, a substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services. Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.

### Deliberate Inappropriate Use of Restraint

The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g. Life Plan or Staff Action Plan), or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this definition, a restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

### Use of Aversive Conditioning

The application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.

### Obstruction of Reports of Reportable Incidents

Conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.

### Unlawful Use or Administration of a Controlled Substance

Any administration by a custodian to a service recipient of a controlled substance without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance at the workplace or while on duty.

STIC staff are prohibited from administering medications to individuals receiving services

### Neglect

Any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:

- failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse if committed by a custodian;
- failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686 of 14 NYCRR, and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or;
- failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's IEP.

## Reportable Incidents – Significant Incidents

### Conduct Between Individuals Receiving Services

Conduct between persons receiving services that would constitute abuse as described in any of the above definitions if committed by a custodian, except sexual activity involving adults who are capable of consenting and consent to the activity;

### Seclusion

The placement of an individual receiving services in a room or area from which they cannot, or perceives that they cannot, leave at will. The use of seclusion is prohibited except when considered an “exclusionary time out” as described below.

Section 633.16 of this 14 NYCRR (Person-Centered Behavioral Intervention) identifies a form of "exclusionary time out," which prevents egress from a time out room by a custodian's direct and continuous action, and requires constant visual and auditory monitoring. Use of exclusionary time out may be included in a formal behavior support plan and implemented in accordance with the conditions and limits set forth in paragraph 633.16(j)(3) of 14 NYCRR.

The use of exclusionary time out in the absence of an approved behavior support plan that incorporates the use of exclusionary time-out, or a failure to implement such a plan as designed, is considered to be “seclusion” and is prohibited.

### Unauthorized Use of Time-Out

The use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming.

### Medication Error with Adverse Effect

The administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on an individual receiving services. For purposes of this clause, "adverse effect" means the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services.

### Inappropriate Use of Restraints

The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is inconsistent with an individual's plan of services (including a behavior support plan), generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies. A "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

### Mistreatment

Conduct on the part of a custodian, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, unless covered under another type of reportable incident or notable occurrence.

### Missing Person

The unexpected absence of an individual receiving services that based on the person's history and current condition exposes them to risk of injury.

### Unauthorized Absence

The unexpected or unauthorized absence of a person after formal search procedures have been initiated by the agency. Reasoned judgments, taking into consideration the person's habits, deficits, capabilities, health problems, etc., determine when formal search procedures need to be implemented. It is required that formal search procedures must be initiated immediately upon discovery of an absence involving a person whose absence constitutes a recognized potential danger. If an individual is at risk to themselves then the incident is always reported as a Missing Person.

### Choking, with Known Risk

Partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk.

### Choking, with No Known Risk

Partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, other than a Choking with Known Risk as described above.

### Self-Abusive Behavior, with Injury

A self-inflicted injury to individual receiving services that requires medical care beyond first aid.

### Injury, with hospital Admission

An injury that results in the admission of a service recipient to a hospital for treatment or observation, except as defined under Self-Abusive Behavior above.

### Theft and Financial Exploitation

Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services.

### Other Significant Incident

An incident that occurs under the auspices of STIC, but that does not involve conduct on the part of a custodian, and does not meet the definition of any other incident described in this subdivision, but that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services.

## **Part 624 Notable Occurrences**

Notable Occurrences are situations that occur under the auspices of STIC and fall into two categories: Serious Notable occurrences and minor Notable Occurrences. These events and situations are defined below.

### **Serious Notable Occurrences**

#### Death

The end of life, expected or unexpected, regardless of cause.

#### Sensitive Situation

Those situations involving a person receiving services that do not meet the criteria of the definitions in paragraphs (1) – (5) of this subdivision or the definitions of reportable incidents as defined in section 624.3 of Part 624, that may be of a delicate nature to the agency, and are reported to ensure awareness of the circumstances. Sensitive situations shall be defined in agency policies and procedures, and shall include, but not be limited to, possible criminal acts committed by an individual receiving services. Sensitive situations are serious notable occurrences.



## Minor Notable Occurrences

### Injury

Any suspected or confirmed harm, hurt, or damage to an individual receiving services, caused by an act of that individual or another, whether or not by accident, and whether or not the cause can be identified, which results in an individual *requiring* medical or dental treatment (e.g. positive x-ray finding, received medication etc.) by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid. Illness in itself shall not be reported as an injury or any other type of incident or occurrence.

### Theft and Financial Exploitation

Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.

Summary of Part 624 Categories and Classifications	
Category	Classification
<b>Reportable Incidents Abuse/Neglect</b>	Physical Abuse
	Sexual Abuse
	Psychological Abuse
	Deliberate inappropriate use of restraints
	Aversive conditioning
	Obstruction of reports of reportable incidents
	Unlawful use or admin of controlled substances
	Neglect
<b>Reportable Incidents Significant Incidents</b>	Conduct between individuals receiving services
	Seclusion
	Unauthorized use of time out
	Medication error with adverse effect
	Inappropriate use of restraints
	Mistreatment
	Missing Person
	Unauthorized Absence
	Choking with a known risk
	Choking with no known risk
	Self-abusive behavior with injury
	Injury with hospital admission
	Theft or financial exploitation
Other significant incident	
<b>Serious Notable Occurrences</b>	Death
	Sensitive Situation
<b>Minor Notable Occurrences</b>	Theft or financial exploitation
	Injury

## Part 624 Reporting Requirements

All STIC employees, interns, volunteers, consultants, and contractors are required to report any event or situation that meets the criteria of a Reportable Incident or Notable Occurrence, as defined above. However, in all cases the first priority is to ensure the safety of individual's receiving services.

All staff present when a reportable incident or notable occurrence occurs or is discovered are responsible to:

1. Ensure the individual's safety;
2. Render assistance to the individual immediately, intervening or terminating the situation if necessary.
3. Call for assistance from others if needed;
4. Call 911 to obtain emergency care or notify primary physician if medical examination or treatment is thought to be necessary;
5. Call 911 if law enforcement is thought to be immediately necessary;
6. Notify the Quality Management Specialist or designee, and their Program Supervisor of the incident/occurrence according to agency policy;
7. As soon as possible, all staff with knowledge of the situation, will record all details of the situation, all descriptions provided by other participants/observers and all actions taken and planned. Witness Statement?

### Reporting Reportable Incidents and Serious Notable Occurrences

The party that witnessed or discovered an incident or serious notable occurrence must notify the following individuals immediately following occurrence or discovery, but in no case later than 24 than afterwards:

- the Quality Management Specialist (QMS); and
- their supervisor at STIC.

The Quality Management Specialist will:

- Immediately report the incident or serious notable occurrence to the OPWDD Incident Management Unit (IMU) by telephone;
- Enter information into IRMA within 24 hours of occurrence or discovery, or by close of the next working day, whichever is later.
- Generate an OPWDD 147 that addresses the following:
  - Description of the situation – including facts and circumstances surrounding the incident, extent of injury, abuse, neglect, error, etc.;
  - Protection - Immediate action taken in response to the occurrence to protect the health and safety of the person receiving services (i.e. medical attention, relocation of the individual, immediate training and/or reassignment or suspension of staff, law enforcement notification, etc.);
- Report the incident to STIC's Executive Director or designee; and
- In the case of any reportable incident/notable occurrence where a crime may have been committed against an individual that receives services, ensure that appropriate law enforcement officials have been notified.
- Ensure that STIC's Incident Reporting Policies and Procedures have been adhered to for proper notification, classification, reporting, documentation, and follow up by all staff involved.

The Supervisor will:

- Immediately respond, observe, provide and/or designate staff to provide necessary services to the person receiving services, as needed;
- Ensure that all necessary and reasonable steps have been taken to ensure that the individual(s) receiving services has received necessary treatment or care and reasonable and prudent measures to immediately protect individuals receiving services from harm and abuse;
- Ensure that STIC's Incident Reporting Policies and Procedures have been adhered to for proper notification, classification, reporting, documentation, and follow up by all staff involved.

The Supervisor, Quality Management Specialist, and Executive Director or designee, must ensure that action is taken to protect the safety and welfare of the person(s) receiving services.

This may include removing an employee, intern, volunteer or contractor alleged to have abused or neglected a person from direct contact with, or responsibility for all persons receiving services from the agency.

### Reporting Deaths

The death of any individual that occurred under the auspices of STIC will be classified as a serious notable occurrence and will be reported and managed as such.

A death is considered to have occurred under the auspices of STIC if the individual:

- received OPWDD funded services from STIC and the death occurred while the individual was receiving such services, or
- the death was caused by a reportable incident or notable occurrence that occurred during the provision of services within thirty days of the death.

In addition to following reporting requirements for a serious notable occurrence, a Report of Death form will be completed and submitted by the QMS via IRMA within 5 working days of discovery or occurrence.

The QMS would also notify the coroner of a death that was a suicide, homicide, accidental death, or death due to suspicious, unusual, or unnatural circumstances.

Staff that become aware of the death of an individual receiving service that is not under the auspices of STIC, must immediately report the situation to:

- the Quality Management Specialist; and
- their supervisor at STIC.

The supervisor will be responsible for notifying the appropriate agency of the death, in the order stated below, as that agency has the responsibility to report and address the situation:

- OPWDD certified or operated residential facility, including a family care home;
- OPWDD certified or operated free standing respite facility;
  - if the death occurred during the individual's stay at the facility, or was caused by a reportable incident or notable occurrence defined in sections 624.3 and 624.4 of Part 624, that occurred during a stay at the facility within thirty days of discovery of the death;
- OPWDD certified or operated day program (if the individual received services from more

than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);

- Care Coordination Organization (CCO)
- HCBS Waiver service provider;
- Care at Home Waiver services provider;
- Article 16 clinic services provider;
- FSS or ISS provider; and then
- Any other service operated by OPWDD.

### Reporting Minor Notable Occurrences

The party that witnessed or discovered a minor notable occurrence must report the situation to the following parties within 48 hours of occurrence or discovery:

- the Quality Management Specialist (QMS); and
- their supervisor at STIC.

The Quality Management Specialist will enter information related to minor notable occurrences into the Incident Report and Management Application (IRMA) within 48 hours of occurrence or discovery or by close of the next working day, whichever is later.

### Reporting to Law Enforcement

The supervisor of a staff person that witnessed or discovered an incident/occurrence that warrants a response by law enforcement will notify an appropriate law enforcement official within 24 hours of occurrence or discovery. This includes anytime a crime may have been committed against an individual by a custodian.

The Quality Management Specialist will enter information into IRMA regarding the report to the appropriate law enforcement official within 24 hours of the report being made.

### Updating IRMA

As the Quality Management Specialist becomes aware of subsequent information regarding a reportable incident or notable occurrence, that was not included in the initial information entered in IRMA they will enter the information into IRMA as outlined below. This includes, but is not limited to, information about required notifications that were not reported as part of the initial information and any updates to information related to deaths (e.g. autopsy reports).

Subsequent information will be entered by the close of the fifth working day after the action is taken or the information becomes available, except as follows:

- Subsequent information about immediate protections shall be entered into IRMA within 24 hours after the action is taken or by the close of the next working day, whichever is later;
- Subsequent information about a death shall be entered in IRMA within five working days of the discovery of the death, in the manner and form specified by OPWDD;
- STIC will comply with all requests by OPWDD for the entry of specific subsequent information.

## Investigations

Any report of a reportable incident or notable occurrence will be thoroughly investigated by the Quality Management Specialist (or designee if the Quality Management Specialist is unavailable), unless OPWDD or the Justice Center advises STIC that the incident or occurrence will be investigated by OPWDD or the Justice Center and specifically relieves the agency of the obligation to investigate.

The Quality Management Specialist is responsible for monitoring IRMA to ascertain whether the Justice Center, the Central Office of OPWDD, or STIC is responsible for the investigation. If the Justice Center or the Central Office of OPWDD is responsible for the investigation, STIC will fully cooperate with the assigned investigator but will not conduct an independent investigation.

### Investigation Process

Investigations of all reportable incidents and notable occurrences will be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.

STIC will commence an investigation immediately even when it anticipates that the Justice Center or Central Office of OPWDD will assume the responsibility for the investigation. However, if STIC can reasonably anticipate that the Justice Center or the Central Office of OPWDD is likely to investigate the incident, the actions taken by STIC's investigator are restricted to:

- securing and/or documenting (e.g. photographing) the scene as appropriate;
- collecting and securing physical evidence;
- taking preliminary statements from witnesses and involved parties; and
- performing such other actions as specified by the Justice Center or OPWDD.

Additionally, in the event that law enforcement directs STIC to forgo any of the investigatory actions required by Part 624, STIC will comply with such direction.

All investigations that STIC is required to perform pursuant to Part 624 will incorporate the following:

- Witnesses to the incident or occurrence will be identified and interviewed in as private an environment as possible. Interviews should be conducted separately by qualified, objective parties. Interviews of individuals receiving services should be conducted by parties with an understanding of the persons' unique needs and/or capabilities;
- Pertinent information will be reviewed (e.g., records, photos, observations of incident scene, expert assessments);
- Gather and review all information located in the individual's record and program/services records that relate to the investigation;
- Physical evidence, if any, will be identified and appropriate steps shall be taken to safeguard and preserve such evidence;
- In the event that a person is physically injured, an appropriate medical examination of the injured person will be obtained if permitted by the individual or their legal guardian.
  - The name of the examiner will be recorded and his or her written findings will be requested.
  - The investigator will document all attempts to obtain this information if they is unsuccessful in acquiring the written findings.

The investigation shall continue through completion regardless of whether an employee or other custodian who is directly involved leaves employment (or contact with individuals receiving services) before the investigation is complete.

Based on information obtained from the investigation an incident/occurrence may be reclassified. The investigator will determine if the incident/notable occurrence has been classified inappropriately and reclassify the incident/occurrence.

STIC's Quality Management Specialist will report the reclassification:

- in IRMA;
- to STIC's Incident Review Committee and, if appropriate;
- to OPWDD.

In the event that the incident is reclassified, STIC will also make all additional reports and notifications that may be warranted by the reclassification in accordance with these policies and procedures.

All investigations of reportable incidents and notable occurrences will be documented in an investigative report using OPWDD form 149.

Upon completion of the investigation the full text of the investigative report shall be entered into IRMA by the Quality Management Specialist for reportable incidents and serious notable occurrences.

The investigator will update the Incident Review Committee meeting minutes on a monthly basis and present the status of investigation to the committee until the committee determines the investigation to be complete and thorough and accepted the investigation findings and recommendations.

### **Investigation Assignment**

STIC will only assign an individual to investigate a reportable incident or notable occurrence whose work function is at arm's length from staff who are directly involved in the reportable incident or serious notable occurrence.

No one in the direct line of supervision of staff who are directly involved in the reportable incident or serious notable occurrence may conduct the investigation except the Executive Director, who may conduct the investigation of a reportable incident or serious notable occurrence unless he or she is the immediate supervisor of any staff who are directly involved in the reportable incident or serious notable occurrence.

Anyone who has been assigned to investigate a reportable incident, or notable occurrence in which he or she recognizes a potential conflict of interest in the assignment, must report this information to the Executive Director. STIC will relieve the assigned investigator of the duty to investigate if it is determined that there is a conflict of interest in the assignment.

Members of the Incident Review Committee will not be routinely assigned the responsibility of investigating incidents or allegations. In the event that an IRC member conducts an investigation of an incident or occurrence, STIC will comply with Part 624 subparagraph 624.7(d) (7).

No one may participate in an investigation of a reportable incident or serious notable

Occurrence in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse, domestic partner or immediate family member was directly involved.

No one may conduct an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or provides supervision to directly involved parties.

### Investigation Records

OPWDD and the Justice Center have the right to review and/or investigate any reportable incident and/or notable occurrence regardless of the source of the information. All relevant records, reports, and/or minutes of meetings at which the incident or occurrence was discussed shall be made available to reviewers or investigators. Persons receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.

When an incident or occurrence is investigated or reviewed by OPWDD and OPWDD makes recommendations to the agency concerning any matter related to the incident or occurrence (except during survey activities), STIC will either:

- implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
- in the event that the agency does not implement a particular recommendation, submit written justification to OPWDD, within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to STIC regarding such matters, STIC shall make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

In the event that OPWDD or the Justice Center conducts an investigation, STIC may be responsible to conduct some investigatory activities in compliance with Part 624.

### Findings of Reports of Abuse or Neglect

A finding must be made by the investigator upon the completion of an investigation for every allegation of abuse/neglect.

The finding will be based on a preponderance of evidence and will indicate whether:

- The alleged abuse or neglect is *substantiated* because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that the agency was responsible; or
- The alleged abuse or neglect is *unsubstantiated* because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.

If the investigator identifies a systemic problem caused or contributed to the incident, they will determine a concurrent finding with a corresponding recommendation.

If an allegation of abuse/neglect by a custodian is substantiated, the investigator shall present said information to the Incident Review Committee and will meet with (minimally) the Executive Director, and Program Supervisor/Coordinator within 3 working days of the completion of the investigation to discuss implementation of recommendations. In the event the timeframe needs to be extended, the investigator will document the legitimate reason in the investigation. The meeting will occur as soon as practicably possible.

Within 10 days of the completion of the investigation where the report of abuse or neglect has been substantiated, STIC will develop and implement a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of reportable incidents.

The plan must:

- be reviewed and signed by the Executive Director;
- Include the title of STIC staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action;
- be entered into IRMA by the close of the fifth working day after the development of the plan by the Quality Management Specialist.

### **Investigation Reporting Updates**

Reporting updates for reportable incidents and serious notable occurrences will be entered into IRMA on at least a monthly basis or more frequently as requested by OPWDD, until closure of the incident or occurrence. All required fields in IRMA will be completed for the reporting update. At a minimum, the reporting update must include:

- a brief review of additions to the summary of evidence and specific investigatory actions taken since the last update was entered into IRMA, if any; and
- if there have been no additions to the summary of evidence or investigatory actions taken since the last report, an explanation of why no progress has been made.

If STIC is not responsible for conducting the investigation, the required fields will be completed to the extent possible given information provided to the agency. If STIC is responsible for conducting the investigation and if the investigation has not been completed within the timeframe specified in the following paragraph, STIC will inform OPWDD of the reason for extending the timeframe of the investigation and continue to keep OPWDD informed on at least a monthly basis of the progress of the investigation and other actions taken.

### **Investigation Timeframe**

- Investigations of a reportable incident or notable occurrence must be completed no later than 30 days after the incident or notable occurrence is reported to OPWDD, or, in the case of a minor notable occurrence, no later than 30 days after entry of initial information in IRMA. An investigation shall be considered complete upon completion of the investigative report;
- STIC may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. The agency shall document its justification for the extension in the minutes of the IRC. Circumstances that may justify an extension include, but are not limited to:
- whether a related investigation is being conducted by an outside entity (e.g. law enforcement) that has requested that the agency delay necessary investigatory actions; or



- whether there are delays in obtaining necessary evidence that are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).

An incident or occurrence shall be considered closed in cases when:

- STIC has completed the investigation and the IRC has ascertained that no further investigation is necessary; or
- the investigation is conducted by the Central Office of OPWDD and the Central Office of OPWDD notifies STIC of the results of the investigation.

### **Part 625 Requirements**

Part 625 applies to those events and situations that are not “under the auspices” of the agency. The definition of “under the auspices” in this section does not affect STIC’s responsibility to intervene and take appropriate action in situations, which occur pursuant to the requirements of section 624.5 of 14 NYCRR.

An event or circumstance is considered not to be under the auspices of STIC if it:

- Exclusively involves the person’s family, friends, employers, or co-workers, whether or not in the presence of STIC personnel;
- Occurs during the provision of services, which are subject to the oversight of a State Agency other than OPWDD (e.g. special education, Article 28 clinic, hospital, physician’s office), whether or not in the presence of STIC personnel;
- Is based on conditions in a private home or workplace.

### **Part 625 Reporting Requirements**

Staff that become aware of a situation that is not under the auspices of STIC, but meets the definition of a reportable incident or serious notable occurrence under Part 624 or an event under Part 625, must immediately report the situation to:

- the Quality Management Specialist, and
- their supervisor at STIC.

The Quality Management Specialist will:

- Collect information sufficient to submit an initial report (OPWDD 150) into IRMA within 24 hours of occurrence or discovery, or by close of the next working day, whichever is later. This includes information to identify all actions taken by the agency, including any initial actions taken to protect the involved individual;
- Report any allegations of abuse by telephone or email to the Incident Management Unit within 24 hours of occurrence or discovery;
- Direct staff to notify an appropriate party who may be in a position to address the event or situation (e.g. Statewide Central Register of Child Abuse and Maltreatment, Adult Protective Services, law enforcement, school, or hospitals);
- Complete Part II of the OPWDD Form 150 information into OPWDD IRMA within 5 business days or as information is made known. Updates shall include actions to prevent a reoccurrence,

monitoring, subsequent interventions, follow up and information about the resolution of the event or situation;

- Interview the involved individuals or parties, if applicable;
- Report updates on the event or situation in IRMA on a monthly basis or more frequently upon the request of OPWDD until the event or situation is resolved. Such updates will include information about subsequent interventions and information about the resolution of the event or situation.

The Supervisor will be responsible for notifying the following parties:

- the individuals' Care Coordinator;
- the applicable OPWDD provider agency when the situation occurred under the auspices of that agency; and/or
- management of any other facility, agency or organization subject to the regulatory oversight of another State Agency (e.g. school, hospital)

All actions and notifications noted above will be documented by the staff person performing them.

If another agency provides services to the individual in addition to STIC, only one agency will be designated to intervene in events or situations that meet the definition of physical, sexual, or emotional abuse; active, passive, or self-neglect; or financial exploitation.

The agency responsible for intervening shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

- OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
- Care Coordination Organization;
- HCBS Waiver services;
- Care at Home Waiver services;
- Article 16 clinic services;
- FSS or ISS services;
- Any other service operated or funded by OPWDD.

### **Responsibility to Intervene**

If another agency provides services to the individual in addition to STIC, only one agency will be designated to intervene in events or situations that meet the definition of physical, sexual, or emotional abuse; active, passive, or self-neglect; or financial exploitation. The agency responsible for intervening shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

- residential facility, including a family care home;
- certified day program (if the individual is receiving services from more than one certified day program, the responsible agency shall be the agency that provides the greater duration of service on a regular basis);
- Care Coordination Organization;
- HCBS Waiver services including respite services provided at a free standing respite facility or services under the Care at Home Waiver;
- FSS, ISS and/or Article 16 clinic services;

- Any other service certified, operated, or funded by OPWDD.

### **OPWDD Investigations**

OPWDD has the right to investigate or review any event or situation regardless of the source of the information. STIC will provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation. When an event or situation is investigated or reviewed by OPWDD, OPWDD may make recommendations to STIC concerning any matter related to the event or situation. In the event that OPWDD makes recommendations, STIC will either:

- implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
- in the event that STIC does not implement a particular recommendation, submit written justification to OPWDD within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

## **Part 625 Events and Situations**

### **Definitions**

Below are definitions of events and situations that fall under Part 625.

#### **Physical Abuse**

The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.

#### **Sexual Abuse**

Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

#### **Emotional Abuse**

The willful infliction of mental or emotional anguish by threat, humiliation, intimidation, or other abusive conduct, including but not limited to, frightening or isolating an adult.

#### **Active Neglect**

The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.

#### **Passive Neglect**

The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

### Self Neglect

An adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.

### Financial Exploitation

The use of an adult's funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.

### Death

The end of life, expected or unexpected, regardless of cause.

## Jonathan's Law

Sections 633.23 and 633.25 of New York State Mental Hygiene Law (MHL), commonly known as "Jonathan's Law" require the notification and disclosure of records pertaining to certain types of incidents.

### Notification

A consumer and/or their advocate/correspondent, guardian, parent, spouse or adult child who is considered to be a "qualified person" according to Section 33.16 of the Mental Hygiene Law must be notified of reportable incidents and notable occurrences that occur while the consumer is receiving services under the auspices of STIC. STIC's policy is to provide notification for all Reportable Incidents and Notable Occurrences.

Each adult consumer without a legal guardian will complete a form designating their choice of "qualified person" or their decision not to have notification made to the aforementioned parties.. This form will be reviewed annually with the individual's Staff Action Plan. Multiple qualified persons may be designated.

Qualified Persons of minors receiving services will be identified in the minor's consumer record.

The Quality Management Specialist or designee will provide notice by telephone of the aforementioned incident/occurrences within 24 hours of completion of an OPWDD 147 pertaining to the incident or serious notable occurrence or entry into IRMA for a minor notable occurrence.

Notification will include:

- A description of the event or situation and a description of initial actions taken to address the incident or occurrence, if any;
- An offer to meet with the Executive Director or designee to further discuss the incident or occurrence;
- For reports of abuse, an offer to provide information on the status and/or finding of the report. Requested information will be provided verbally or in writing unless the person is a capable adult and objects to the provision of this information.

Under certain circumstances notification is not required in the event of an incident as previously described. An exception to the notification requirement is made when:

- The consumer is a capable adult who objects to notification being made to someone else;
- The advocate/correspondent, guardian, parent, spouse or adult child provides written objection to notification to him/herself;
- The person who would otherwise be notified is the alleged abuser.

### Report on Actions Taken

Individuals that are required to be notified of incidents and notable occurrences, as previously outlined, must also receive a written report on actions taken to address the incident.

This must be done on Form OPWDD 148 within 10 days of the completion of the OPWDD 147 pertaining to the incident.

The Quality Management Specialist will complete Form 148 and provide to a staff person that works directly with the individual to obtain a signature.

The report will include: any immediate steps taken in response to the incident/occurrence to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.

The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

### Release of Records

Upon written request, a consumer or their advocate/correspondent, guardian, parent, spouse or adult child must be provided with a redacted OPWDD 147 pertaining to any incident covered by Jonathan's Law per regulations under Section 33.25 of the Mental Hygiene Law.

Requests for records should be sent to STIC's QMS and only the following staff authorized to release records to eligible requestors:

- Quality Management Specialist (QMS);
- Assistant Director; or
- Executive Director.

As required by Jonathan's Law, additionally, upon written request, a consumer and/or their guardian, parent, spouse or adult child who is considered to be a "qualified person" according to Section 33.16 of the Mental Hygiene Law, is eligible to receive redacted records and documents pertaining to allegations and investigations into abuse, which occur under the auspices of STIC. An advocate or correspondent is not eligible to receive a copy of an investigation report and other investigation documents.

The OPWDD document entitled, "Template Cover Letter for Disclosure of Investigative Records Subject to Jonathan's Law (MHL 633.25) Revised October, 2013" will accompany the release of all records requested.

Under certain circumstances disclosure of records is not required as previously described. An exception to the disclosure requirement is made when:

- The consumer is a capable adult and objects to the release of records to an otherwise eligible requestor;
- The otherwise eligible requestor is the alleged abuser (he or she is not eligible to receive records).

STIC will release documents and records within 21 days of the closure of the alleged abuse case or within 21 days of the request, if the request is made after closure of the investigation.

Closure is considered the time when the Incident Review Committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, unfounded or inconclusive.

All release of records will minimally be in compliance with Jonathan's Law and the Health Insurance Portability and Accountability Act (HIPAA).

### **Redaction of Records**

All records released in relation to a request under Jonathan's Law must be redacted prior to disclosure. The following information must be removed from the record:

- Names or other information tending to identify people receiving services and employees;
  - For the purposes of redaction of records the definition of employee includes staff, interns consultants, contractors, interns, and volunteers;
- Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.

Redaction will be waived if the employee or person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations).

### **Record Keeping**

A copy of all documents utilized to comply with Jonathan's Law will be maintained in the incident investigation file.

### **Incident Review Committee**

STIC has an Incident Review Committee (IRC) to review and monitor Part 624 reportable incidents and notable occurrences regarding individuals receiving OPWDD services from STIC.

The Incident Review Committee will review and monitor all reportable incidents, notable occurrences and other significant events or situations to:

- ascertain that reportable incidents and notable occurrences were reported, managed, investigated and documented consistent with the provisions of Part 624 and agency policies and procedures;

- ascertain that necessary and appropriate corrective, preventive, remedial and/or disciplinary action has been taken to protect persons receiving services from further harm and to safeguard against the recurrence of similar reportable incidents and notable occurrences
- monitor investigatory procedures and ascertain if further investigation or additional corrective, preventive, remedial and/or disciplinary action is necessary;
- monitor the actions taken on all recommendations made and advise the Executive Director when there is a problem;
- ascertain and ensure the adequacy of the agency's reporting and review practices, including monitoring of the implementation of approved recommendations for corrective, preventive, and remedial action.
- identify and monitor trends in reportable and notable occurrences (e.g., by type, person, site, employee involvement, time, date, circumstances, etc.);
- monitor trends of other events or situations attributable to a person receiving services, which may be potentially harmful, but do not meet the definition of being a reportable event;
  - This may be done by the full committee or a member of sub-committee reporting to the full committee.
- make written recommendations to the Executive Director and any other appropriate staff regarding:
  - a specific reportable incident or notable occurrence, including ensure appropriate corrective, preventive, remedial and/or disciplinary action to the and safeguard against recurring situations or reportable incidents and notable occurrences;
  - changes in agency policy, procedures and practices to improve conditions contributing to the reportable incidents and/or notable occurrences and to correct, improve or eliminate inconsistencies related to the incident reporting and review process;
  - eliminating or minimizing similar reportable incidents and/or notable occurrences from happening in the future, and/or to improve investigatory or other procedures; and
  - addressing and trends identified.

### Operation of the Incident Review Committee

The IRC will:

- comply with applicable laws regulations and policies and procedures in relation to the review and monitoring of all reportable incidents and notable occurrences;
- meet no less frequently than on a quarterly basis and always within one month of a report of a reportable incident or serious notable occurrence (or sooner should the circumstances warrant);
- Keep incidents open and under review until Committee recommendations have been completed or scheduled for completion to the Committee's satisfaction;
- Maintain documentation that all reportable incidents and notable occurrences have been reviewed by the committee and that results and recommendations have been conveyed to appropriate agency personnel and others with a need to know;
- Forward findings and recommendations to the Executive Director within two weeks of meeting;
- Report annually to the Executive Director, STIC's Board of Directors, and OPWDD concerning:
  - the committee's general monitoring functions;
  - general identified trends in reportable incidents and notable occurrences; and
  - corrective, preventive, remedial and/or disciplinary action pertaining to identified trends.

### Membership of the Incident Review Committee

The Executive Director will appoint members of the incident review committee. The Incident Review Committee may have other responsibilities in addition to specified responsibilities related to reportable incidents, serious reportable incidents, and allegations of abuse.

Membership of the Incident Review Committee will include:

- a member of STIC's Board of Directors;
- at least two professional staff, including but not limited to, licensed clinicians, such as occupational, physical, and speech therapists, social workers, psychologists, and nurses;
- a behavioral intervention specialist ((BIS), see subdivision 633.16(b));
- staff with a primary responsibility for developing and/or monitoring individuals' plans of care, such as developmental and habilitation specialists or a QIDP;
- at least one of the professional staff must be a licensed health care practitioner (e.g. physician,
- physician's assistant, nurse practitioner or registered nurse);
- other staff, including administrative staff, as deemed necessary by the agency to achieve the purposes of the committee pursuant to this section;
- at least one direct support professional (except for agencies that do not have direct support professionals);
- at least one individual receiving services;
- at least one representative of advocacy organizations (e.g. self-advocacy, family or other advocacy organizations); and
- the participation of a psychologist on the committee is recommended.

In the event that STIC is unable to obtain the members required above, STIC will document its periodic efforts to obtain the specified members in the IRC Minutes.

Members of the committee shall be trained in confidentiality laws and regulations and will comply with section 74 of the Public Officers Law.

### Membership Limitations

The Executive Director of STIC cannot serve as a member of the committee, but may be consulted by the committee in its deliberations.

The supervisor of a group or groups of services may be designated as a member only if the committee is an agency-wide or multi-program committee. If he or she is not a member, the committee in its deliberations may consult a supervisor.

There must be representation by someone with knowledge of STIC, if that is where the event, which is under discussion, occurred; or by someone who is familiar with the person(s) involved.

No committee member may participate in the review of any reportable incident or notable occurrence in which:

- they were directly involved;
- their testimony is incorporated;
- their spouse or other immediate family member was directly involved; or
- they investigated or participated in the investigation thereof.



Such members may participate in committee deliberation regarding appropriate corrective or preventive action.

Any committee member who recognizes a potential conflict of interest while a member of the IRC must report this information to the committee and recuse him or herself from participating in a review of the incident or occurrence in question.

### Minutes

The chairperson of the Incident Review Committee will ensure that minutes are kept for all meetings.

For reportable incidents and serious notable occurrences, the portion of the minutes that discuss matters concerning the specific event or situation shall be entered into IRMA within three weeks of the meeting by the Quality Management Specialist.

Minutes addressing the review of specific reportable incidents and/or serious notable occurrences will include:

- the incident number
- the person's full name and identification number (if used),
- full names of all parties involved (not initials),
- a brief summary of the situation (including date, location and type) that caused the report to be generated,
- committee findings (including reclassification of event, if applicable), and
- recommendations and actions taken on the part of the agency as a result of such recommendations.

### Record Keeping

All documents utilized in the incident and occurrence reporting and investigation process will be maintained in a manner that protects the confidentiality of those involved, as required by law. STIC will maintain the confidentiality of information regarding the identities of reporters, witnesses, and subjects of reportable incidents and notable occurrences, and limit access to such information to parties who need to know.

At a minimum they will be maintained in an office that is locked when unoccupied. Only individuals involved in the incident reporting process and the Executive Director may have access to incident reporting documents. Those allowed access include:

- Executive Director;
- Members of STIC's Incident Review Committee;
- Incident investigators; and
- Supervisors of staff involved in incidents.

Additionally, all incident reporting documentation will be kept on file for a minimum period of seven years from the date that the incident or occurrence is closed. However, when there is a pending audit or litigation concerning an incident or occurrence, STIC will retain the pertinent records during the pendency of the audit or litigation.